

AMENDED IN ASSEMBLY APRIL 10, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

## ASSEMBLY BILL

No. 2082

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Introduced by Assembly Member Atkins

February 23, 2012

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An act to add Sections 6224.3, 6224.4, and 6224.5 to the Public Resources Code, relating to public lands.

### LEGISLATIVE COUNSEL'S DIGEST

AB 2082, as amended, Atkins. Public lands: State Lands Commission: violations.

Existing law establishes the State Lands Commission in the Natural Resources Agency. Under existing law, the commission classifies state land for its different possible uses and has jurisdiction over various state lands.

This bill would prohibit a person from constructing, *designing*, placing, maintaining, owning, using, or possessing a structure or facility on land *that is* under the commission's jurisdiction, ~~unless all necessary easements, leases, permits, and other instruments required by law and owned by the state, without first obtaining all necessary easements, leases, or permits from the commission~~ that authorize the construction, design, placement, maintenance, ownership, use, or possession of the structure or facility ~~have been obtained~~.

This bill would establish a civil penalty ~~or fee~~ for a violation of that provision. A person who violates that provision would either be liable for a penalty of not more than \$1,000 a day ~~or assessed a monthly use and occupancy fee~~ *an amount* that is not more than 60% higher than the full fair market rental for each ~~day~~ *month* that a violation occurs, *as specified*. The bill would state criteria for determining the appropriate

penalty ~~or fee~~. The bill would exempt a telegraph or telephone corporation undertaking specified action and a franchised cable television corporation, limited to their usage of poles, conduits, cables, wires, and associated appurtenances under either their ownership or the ownership of an electrical corporation, from that penalty ~~and fee~~.

The bill, among other things, also would establish procedures to enjoin such activity, remove a violating structure or facility, and serve notice of any violation.

*The bill would exempt certain persons from the bill's prohibitions and would authorize the commission to adopt regulations to carry out the bill.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 6224.3 is added to the Public Resources  
2 Code, to read:

3 6224.3. (a) A person shall not construct, *design*, place,  
4 maintain, own, use, or possess a structure or facility on land *that*  
5 *is* under the commission's jurisdiction ~~unless all necessary~~  
6 ~~easements, leases, permits, and other instruments required by law~~  
7 ~~that and that is owned by the state without first obtaining all~~  
8 ~~necessary easements, leases, or permits from the commission that~~  
9 authorize the construction, design, placement, maintenance,  
10 ownership, use, or possession of the structure or facility ~~have been~~  
11 ~~obtained~~.

12 (b) ~~A~~ *Except as provided in subdivisions (a) and (b) of Section*  
13 *6224.5, a person, other than a telegraph or telephone corporation*  
14 *acting pursuant to Section 7901 of the Public Utilities Code or a*  
15 *franchised cable television corporation, as defined in Section 216.4*  
16 *of the Public Utilities Code, and limited to their usage of poles,*  
17 *conduits, cables, wires, and associated appurtenances under either*  
18 *their ownership or the ownership of an electrical corporation, as*  
19 *defined in Section 218 of the Public Utilities Code, who violates*  
20 *subdivision (a) shall either be liable for a penalty of not more than*  
21 *one thousand dollars (\$1,000) a day or assessed a monthly use and*  
22 ~~occupancy fee~~ *an amount that is not more than 60 percent higher*  
23 *than the full fair market rental for each day month that a violation*

1 occurs. *If the violation occurs during only part of a calendar*  
2 *month, the commission may prorate the penalty.*

3 (c) In determining the appropriate penalty ~~or fee~~ described in  
4 subdivision (b), the commission shall consider all of the following  
5 factors:

6 (1) The physical extent of the violation on the land under the  
7 commission's jurisdiction.

8 (2) The degree of culpability of the violator.

9 (3) The degree of cooperation of the violator *and whether the*  
10 *structure or facility is susceptible to removal or the violation is*  
11 *susceptible to resolution.*

12 (4) ~~The~~ *Any prior history of violations of statutes or leases*  
13 *pertaining to lands under the commission's jurisdiction, including*  
14 *the past history of the violator in taking all feasible steps or*  
15 *procedures necessary or appropriate to correct a violation.*

16 (5) ~~The violator's prior violations of statutes, rules, orders, or~~  
17 ~~leases pertaining to lands under the commission's jurisdiction.~~

18 (6) ~~The impact the violation causes on the environment to public~~  
19 ~~access, the public trust, or other property interests under the~~  
20 ~~commission's jurisdiction.~~

21 (7) ~~Any matters relevant to a fair and just result.~~

22 (8) ~~Any other factors determined by the commission to be~~  
23 ~~relevant and consistent with the policy of the commission.~~

24 (5) *The extent to which the violation causes environmental harm*  
25 *or impairs public access to trust lands.*

26 (6) *Any factor determined by the commission to be relevant to*  
27 *a fair and just result, and in the best interest of the state.*

28 (d) The penalty ~~and fee~~ described in this section shall be  
29 imposed from the first day of the violation ~~to the day the violation~~  
30 ~~ends~~ *the commission issues an order to the day when the violation*  
31 *is cured.*

32 (e) ~~If the penalty or fee described in this section is not paid~~  
33 ~~within the time allowed under the final order, interest shall accrue~~  
34 ~~at the rate prescribed by Section 6224. The final order may be~~  
35 ~~recorded with the county clerk in any county of this state and shall~~  
36 ~~have the same force, effect, and priority as a judgment lien.~~

37 (f)

38 (e) The commission may enjoin a person who violates  
39 subdivision (a) from continuing that violation.

40 (g)

(f) The commission may require a person who violates subdivision (a) to remove the structure or facility at the person's own expense. If the violator refuses to remove the structure or facility, or if the violator cannot be located, the commission may, at its own expense, remove the structure or facility from the land under the commission's jurisdiction. The commission may pursue whatever legal remedies are available to recover the removal costs from the violator, ~~including placing a lien on the assets of the violator.~~

~~(h) The commission may elect to take ownership of the structure or facility as a fixture and may exercise the state's rights as owner of the structure or facility.~~

(i) For the purposes of this section, a structure or facility shall include, but is not limited to, buildings, boat houses, docks, piers, ~~revetment, revetments,~~ fill, pilings, pipelines, groins, jetties, seawalls, breakwaters, and bulkheads.

~~(j) The remedies provided in this section shall be obtained by the commission through administrative action or by the Attorney General through civil action. If~~

~~(h) If the Attorney General prevails in a civil action for a violation of this section, the state necessary to enforce an order of the commission issued pursuant to this section, the Attorney General shall be awarded attorney's fees and costs.~~

~~(k)~~  
(i) The remedies provided by this section are in addition to and not in lieu of any other penalty or sanction provided by law.

~~(l) The commission may adopt regulations necessary or useful to carry out this section.~~

SEC. 2. Section 6224.4 is added to the Public Resources Code, to read:

6224.4. (a) ~~If the commission elects to pursue any of the remedies provided under Section 6224.3 through an administrative action, the commission shall first provide a 30-day notice to the person against whom it seeks to impose any of the remedies. The~~  
*Before the commission considers whether to pursue a remedy provided under Section 6224.3, the commission shall first provide a written notice to the person against whom the commission seeks to impose the penalty. The commission shall send the notice not*

1 *less than 30 days before the date set for conducting a hearing*  
2 *pursuant to this section. A notice shall include all of the following:*

3 (1) The date, time, and location of the commission hearing  
4 where the person may appear and be heard.

5 (2) A statement of the authority and jurisdiction under which  
6 the hearing is to be held.

7 (3) A reference to the particular sections of the statutes and rules  
8 involved.

9 (4) A short and plain statement of the matters asserted or  
10 charged, including a description of the violation complained of  
11 with reasonable certainty as to its character and location.

12 (5) A statement indicating whether and under what  
13 circumstances an order by default may be entered.

14 (b) In lieu of personal service, service of notice may be made  
15 by registered mail and by posting a copy of the notice on the  
16 structure or facility that is in violation of subdivision (a) of Section  
17 6224.3.

18 (c) If the person fails to appear at the noticed hearing, the  
19 commission may ~~make a final~~ *issue an order*.

20 (d) A hearing ~~may shall~~ be scheduled as a regular calendar item  
21 at a properly noticed commission meeting.

22 (e) *A person against whom the commission has issued an order*  
23 *imposing a remedy provided in Section 6224.3 may seek review*  
24 *of the order pursuant to Section 1094.5 of the Code of Civil*  
25 *Procedure.*

26 SEC. 3. Section 6224.5 is added to the Public Resources Code,  
27 to read:

28 6224.5. (a) ~~If, at the time this section is enacted as of January~~  
29 ~~1, 2013, a person is in violation of subdivision (a) of Section~~  
30 ~~6224.3, that person shall have six months to remedy not be subject~~  
31 ~~to a penalty pursuant to that section, if the person, on or before~~  
32 ~~July 1, 2013, remedies the violation or have submits to the~~  
33 ~~commission a completed lease application with, including the~~  
34 ~~payment of all fees and costs submitted to the commission without~~  
35 ~~being subject to a penalty or fee.~~ The remedy may include, but is  
36 not limited to, entering into an appropriate lease with the  
37 commission or adequately removing the structure or facility.

38 (b) *A person shall not be subject to a penalty or order pursuant*  
39 *to Section 6224.3, if the person submits a notice to the commission*  
40 *that a structure or facility owned by that person is potentially in*

1 violation of subdivision (a) of Section 6224.3 and the person, within  
2 six months from the date the notice is received by the commission,  
3 remedies the violation or submits to the commission a completed  
4 lease application, including the payment of all fees and costs. This  
5 subdivision shall apply only if the potential violator submits a  
6 notice to the commission before the commission otherwise receives  
7 notice or information regarding the potential violation, or takes  
8 action against the violator.  
9 (c) The commission may adopt regulations necessary or useful  
10 to carry out this section and Sections 6224.3 and 6224.4.